False Messages to the Public About Municipalities

written by Samir Aliyev

Every year in February, when the report prepared by the Azerbaijani Ministry of Justice on the annual results of administrative supervision over the activities of municipalities is discussed in parliament, MPs and outside observers raise the need to strengthen the institute of local self-government in the country. Despite the fact that the parliamentary debates reveal shortcomings in the activities of municipalities, the general argument is that it is long overdue to expand their responsibilities and powers. There are even proposals to expand powers and financial capacity in periodicals and social networks. But once the report is adopted, things quiet down, and the solution to the problem of local self-government loses its priority. This process has repeated every year for the past 23 years.

The reality is that, despite all the discussions and appeals of international organizations, the central government is unwilling to share its power with local authorities. And certain segments of society have begun to feel that local government is an unnecessary institution and even that it should be eliminated. One of the main reasons for this opinion is the existence of misconceptions generated by ignorance of local government. The purposeful manipulation of the central government structures plays no less of a role in creating false impressions of the functions of local government. Discussions of municipalities in parliament in February of this year showed that the deputies and executive bodies also dispense misconceptions about local self-government. In this article, I will try to clarify what these misconceptions are.

The greatest misconception about local self-government is that municipalities are presented as private institutions

representing the self-governance of the population, rather than as real, democratic local power. The root of this misconception lies in Azerbaijani municipal legislation. Despite the requirements of international acts to which the Republic of Azerbaijan has acceded, national legislation does not provide for the vesting of municipalities with real power, nor does it recognize their status as local authorities. Article 3 of the European Charter *of Local Self-Government*, also adopted by Azerbaijan in 2001, defines the concept of local self-government as the following: "Local self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population," while article 1 of the Law *on the Status of Municipalities of the Republic of Azerbaijan* says, "Local self-government in the Republic of Azerbaijan is a system of organizing citizens' activity that grants to its citizens the ability to resolve important local issues independently and freely and to implement a part of state issues."

Apparently, while the Charter provides for the transfer of *a substantial* share of public affairs, national legislation is limited to the transfer of *a share* of public affairs. Additionally, national legislation characterizes municipalities as bodies outside the system of state bodies. According to article 4.3 of the Charter, "Public responsibilities shall generally be exercised, in preference, by those authorities which are closest to the citizen." That is, responsibility should be exercised from below upwards. In national law, by contrast, responsibility is exercised from the top down. Municipalities are given only those powers that the central government does not believe it needs. Local governments treat municipalities as their own branches or affiliates, while municipalities are generally accountable to executive-appointed local authorities, not to the local population, and carry out tasks assigned by those executive-

appointed local authorities. It is no coincidence that Recommendation 461 of the Congress of Local and Regional Authorities of the Council of Europe points out the insufficient and inaccurate definition of the concept of local self-government in Azerbaijani national legislation, the subordination of municipalities to executive-appointed local authorities, and the allocation of responsibilities and powers between executive-appointed local authorities and municipalities is unclear.

The next misconception about local self-governance is related to the demand for a gradual reduction of state budget donations to local budgets and that those donations be used as prescribed by law. At a meeting of the Parliamentary Committee on Regional Affairs held on 15 February 2023, Committee Chairman Siyavuş Novruzov drew attention to the fact that the state allocates donations to the same municipalities every year. According to him, while some municipalities constantly receive donations, others are left without this financial assistance. However, this statement is not true. First of all, all of Azerbaijan's municipalities, without exception, receive donations from the state budget. So far, there has been no practice of denying a donation to any municipality. Secondly, there is no legal responsibility for the fact that the provision of donations is temporary. The larger the deficit in local budgets, the more it should be made up for by donations. This is required by both domestic law and international law to which Azerbaijan has acceded. According to article 9.5 of the European Charter *of Local Self-Government,* to which Azerbaijan has acceded: "The protection of financially weaker local authorities calls for the institution of financial equalisation procedures or equivalent measures which are designed to correct the effects of the unequal distribution of potential sources of finance." Also, in Azerbaijan, there are no government strategies and goals to limit or eliminate funding of local budgets from the state budget altogether.

The more important point regarding the above-mentioned claim

is disputes over how donations for municipalities should be calculated. Budgetary and municipal legislation currently establishes criteria for granting donations to local budgets. According to article 34.4 of the Law on *Budget System*, in the calculation of the level of donation, "the budget must take into consideration the number of people settled in the territory of a municipality, the municipality's share in the formation of financial resources of the country, income and expenses of municipality, whether the municipality is located on the front line [with Armenian-occupied territories], in the border zone or in high mountainous areas, the standard of living of the local population, and planned socio-economic projects)." At present, it is difficult to assess the extent to which and how the government has used the above components in its calculations because the list showing the distribution of donations to municipalities is not publicized. The distribution of donations allocated from the state budget to local budgets was last announced in a 2012 resolution of the cabinet of ministers. Information about the total amount of donations allocated across the country is first disclosed annually in the law on state budget of the given year. For example, according to the Law *On the 2023 State Budget of the Republic of Azerbaijan*, municipalities will receive total donations in the amount of 5,5 million manats and subventions in the amount of 1,55 million manats. The statistical bulletin also published annually by the State Statistics Committee provides relatively extensive information. Distribution of execution of donations by administrative districts and cities can be seen in the "*Execution of Municipal Budget*" bulletin, which the committee publishes every year after the end of the fiscal year. For example, according to statistical data, in 2021, 14,8% of local budgets across the country were formed with financial support from the central government. Although this indicator is relatively low in the budget revenues of municipalities in Absheron (2,6%), Siyazan (4,4%) and Zagatala (5,5%) districts, it was at the maximum level in municipalities of districts, such as Agdam (79,2%), Fuzuli

(92,9%), Tartar (77,6%) and Lerik (78,6%). It is impossible to determine, with small exceptions, how much in donations each city, town and rural municipality receive. Only a few municipalities post this type of information on their official websites.

The Ministry of Justice—the body responsible for administrative oversight of municipalities—also makes a mistake with regard to donations. The ministry periodically notes in its reports that donations are not used by municipalities for their intended purposes; it claims that municipalities do not provide the ministry with information about where they spend financial resources received in the form of donations. Guided by article 6.1.2 of the Law on *Administrative Supervision of Activities of Municipalities*, the ministry may be referring to the fact that it requires reports on the use of financial resources allocated from the state budget. However, here the ministry cannot refer to donations, which are non-targeted funding, but only subventions, which are targeted funding.

Let's focus on the main aspect of donations that distinguishes it from other forms of financial assistance (subsidy, subvention, grant, etc.). According to the Law *on Budget System*, donation is a financial resource provided from the state budget to the budget of the Nakhchivan Autonomous Republic and local budgets in order to balance their revenues and expenditures. Article 34.2 of the law states that "the part of expenditures of local budgets not secured by revenues (the local budget deficit) can be covered with donations from the state budget. The same explanation can be found in the law *On Bases of Finance of Municipalities*. Donations are classified as non-targeted financial assistance; thus, unlike targeted budget transfers, such as subsidies, subventions, and grants, the sole purpose of donations is to cover budget deficits—to ensure a balance between local budget revenues and expenditures. In this regard, comments to municipalities, such as incorrect allocation of donations, have no legal basis. The

task of the Ministry of Justice is to exercise administrative control, not financial control.

Another misconception about local government is that the obligations (or responsibilities) imposed on municipalities are portrayed to society as some form of municipal authority. Of course, responsibilities encompass both an obligation and financial provision. When asked what new responsibilities have been provided to municipalities, officials and deputies point to the transfer of administration of cemeteries to municipalities. In fact, this process, which began in 2017, is not yet complete. Deputy Minister of Justice Vilayat Zahirov explained the incomplete transfer with the fact that cemeteries in the regions lack documents, maps, and passports. Even if this process is fully completed, it does not mean that municipalities' powers and responsibilities will have expanded because the expansion of powers must also include possibilities of revenue generation to meet the obligation of new administrative responsibilities. According to Article 9.2 of the European Charter *on Local Self-Government*, local governments' financial resources shall be commensurate with the responsibilities provided for by the constitution and the law. According to article 144 of the Constitution of the Republic of Azerbaijan, "the legislature and the executive may grant municipalities additional powers. Corresponding funds shall be allocated for the exercise of these powers." This requirement, enshrined in the constitution, is also reflected in Azerbaijan's legislation on municipalities. Article 6.3 of *On the Bases of Finance of Municipalities* states that if decisions made by executive bodies result in a reduction of income or increase in expenses of local budgets, the amount must be compensated by the executive bodies which make these decisions. In fact, the transfer of authority to municipalities to maintain cemeteries increases their expenditure burden and, in the absence of financial support from the state budget, will further weaken the financial capacity of municipalities.

The idea *that it is inappropriate to give municipalities broad powers suddenly* is yet another misconception about local self-governance. In a speech in parliamentary debates, Deputy Minister of Justice Zahirov said it would be wrong to give municipalities more powers all at once, and that the transfer of powers should take place in stages over time. Such ideas have been repeatedly voiced by central authorities at different times. Over the 23 years of the existence of the institution of local self-governance in Azerbaijan, municipalities have only been given relevant powers gradually, but, moreover, we can observe a periodic further restriction of their powers and revenue-generating opportunities. In 2016, as a result of amendments to the Tax Code, part of revenues from *the land tax for individuals*, which normally belonged in whole to local governments, began to be transferred to the state budget. According to the amendments, if agricultural land plots owned by individuals are not used for their intended purpose, the taxes levied on these lands will be channeled to the state budget, not to local budgets. This move indicates a reduction of municipal revenues. According to the amendments to the Tax Code on 3 December 2021, *the mining tax on construction materials of local importance* imposed by municipalities—one of their 4 sources of tax revenues—began to be transferred to the state budget. In 2021, revenues from the mining tax on construction materials of local importance amounted to 1,24 million manats, accounting for 3% of local budget revenues across the country. Based on other changes made in 2021, part of the *tax on the property of individuals* imposed by municipalities began to be transferred to the state budget. As a result, over the past 6 years, municipalities have been completely deprived of one and partly deprived of two of their four tax revenue sources. There were no revenues at all from the fourth tax—on profits of enterprises and organizations owned by municipalities. Central government representatives often reproach municipalities for their inability to use financial opportunities and powers granted to them, consequently claiming that there is no need to give them

additional powers, yet for every power added, the central government frequently takes away a revenue source. This is an indicator that the central government is not interested in counter-centralization reforms but in creating an environment wherein MPs can always claim that local governments are not ready for new powers. The recommendations issued by the monitoring group of the Congress of Local and Regional Authorities of Europe in 2003 (recommendation No. 126), 2012 (recommendation No. 326) and 2021 (recommendation No. 461) to assess the level of implementation of the European Charter of Local Self-Government requirements in Azerbaijan emphasize the need for empowerment and additional financial capacity of municipalities and propose to recognize municipalities as a state institution exercising state power as a part of general state administration. At the moment, the Council of Europe considers the country with the weakest municipal institutions among Council of Europe member states. For 22 years, the central government has failed to fulfill the requirements of the charter, which in 2001 it adopted and accepted as an obligation.

During a parliamentary debate on local self-government in February of this year, the deputies reiterated the importance of local government reforms. This time, they proposed that the number of municipalities and their staff members be reduced as a reform measure. Azerbaijan has taken such steps twice—in 2009 and 2014—in order to trim down the number of municipalities, almost halving their number. However, this move not only did not contribute to the strengthening of municipalities, but naturally aggravated their problems. Local government reforms, first of all, should begin with a concrete and relatively stable definition of the status of municipalities, who then should be endowed with appropriate powers and provided with appropriate financial resources.